

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STEPHEN PETERSON and  
CHARMAINE PETERSON,  
husband and wife, }  
No. CV-12-202-LRS  
**ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS**  
Plaintiff, }  
vs. }  
sanofi-aventis U.S. LLC, a foreign  
limited liability company, }  
Defendant. }

**BEFORE THE COURT** is Defendant's Fed. R. Civ. P. 12(b)(6) Motion to Dismiss. (ECF No. 2). The motion is heard without oral argument.

## I. BACKGROUND

Plaintiffs Stephen and Charmaine Peterson, a husband and wife living in Spokane, Washington, have brought suit against Defendant sanofi-aventis (“sanofi”) for Mr. Peterson’s alleged wrongful termination. Mr. Peterson worked for sanofi as a sales representative from March 27, 1990, until his termination on March 19, 2009. (ECF No. 1, Ex. 1). Plaintiffs’ suit is premised

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1 on age and disability discrimination, in violation of RCW 49.60.180 and RCW  
2 49.44.090, respectively. *Id.* Plaintiffs also allege that defendant wrongfully  
3 denied Mr. Peterson his severance benefits under a written Separation Plan,  
4 such that he is entitled to recover these benefits under 29 U.S.C. § 1132. *Id.*  
5 Plaintiffs allege they are entitled to damages for and related to economic loss,  
6 mental anguish, and emotional distress. *Id.*

7 In May 2010, Mr. Peterson brought a Small Claims Court action against  
8 Defendant in the District Court of Spokane County regarding accrued and  
9 unused vacation days. The matter was heard before Judge Gregory J. Tripp who  
10 ruled in favor of Mr. Peterson and awarded him \$1,226.62, representing three  
11 days vacation pay at a rate of \$360.64 per day. Sanofi appealed and Judge Tari  
12 S. Eitzen, after a *de novo* review, awarded Mr. Peterson four days vacation pay  
13 at a rate of \$374.48 per day, for a total judgment of \$1,497.92. Sanofi has  
14 satisfied this judgment.

15 Defendant contends plaintiffs are improperly splitting their claims, and  
16 that plaintiffs could have and should have asserted the age and disability  
17 discrimination claims in the May 2010 Small Claims Court action. (ECF No. 3).  
18 According to Defendant: “All claims that Mr. Peterson did raise, or could have  
19 raised, in his action in Small Claims Court, and in the appeal thereof, are barred  
20 by *res judicata*.” *Id.* Defendant alleges that because plaintiffs’ current and  
21 previous claims arise out of the same event – the termination of Mr. Peterson’s  
22 employment – the present claims are barred by *res judicata* and should be  
23 dismissed. *Id.*

24 //  
25 //  
26 //

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**II. DISCUSSION****A. 12(b)(6) Standard**

A Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In reviewing a 12(b)(6) motion, the court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from such allegations. *Mendocino Environmental Center v. Mendocino County*, 14 F.3d 457, 460 (9th Cir. 1994); *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). The complaint must be construed in the light most favorable to the plaintiff. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). The sole issue raised by a 12(b)(6) motion is whether the facts pleaded, if established, would support a claim for relief; therefore, no matter how improbable those facts alleged are, they must be accepted as true for purposes of the motion. *Neitzke v. Williams*, 490 U.S. 319, 326-27, 109 S.Ct. 1827 (1989). The court need not, however, accept as true conclusory allegations or legal characterizations, nor need it accept unreasonable inferences or unwarranted deductions of fact. *In re Stac Electronics Securities Litigation*, 89 F.3d 1399, 1403 (9<sup>th</sup> Cir. 1996).

**B. *Res judicata* Under Washington Law**

A federal court in a diversity case must apply the *res judicata* law of the state in which the federal court sits. *Semtek Int'l Inc. v. Lockheed*, 531 U.S. 497, 508, 121 S.Ct. 1021 (2001). Washington state law applies where a party seeks preclusion based on a Washington state court judgment. *Feminist Women's Health Ct. v. Codispoti*, 63 F.3d 863, 867 (9<sup>th</sup> Cir. 1995), citing *Migra v. Warren*

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1      *City Sch. Dist. Bd. Of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892 (1984).

2      Under Washington law, *res judicata* applies when the prior and current  
 3 litigation are identical in the following respects: “(1) subject matter; (2) cause of  
 4 action; (3) persons and parties; and (4) the quality of the persons for or against  
 5 whom the claim is made.” *Feminist Women’s Health Ctr.*, 63 F.3d at 867 (9<sup>th</sup>  
 6 Cir. 1995), citing *Rains v. State*, 100 Wash. 2d 660, 674, P.2d 165, 168  
 7 (1983)(en banc)). *Res judicata* estops parties from relitigating claims under a  
 8 different legal theory and subsequently filing suit. *Id.* All issues that could have  
 9 been raised in a prior suit are precluded, even if the claims were not actually  
 10 litigated. *Id.* As such, *res judicata* prevents claim-splitting; a plaintiff may not  
 11 file a lawsuit under a new legal theory seeking new legal remedies for a claim  
 12 that could have been raised in a prior action. *Id.* at 868.

13     Defendant asserts that all four of the above-mentioned criteria are  
 14 satisfied with regard to plaintiffs’ current age discrimination/wrongful  
 15 termination action and Mr. Peterson’s May 2010 Small Claims Court action.  
 16 (ECF No. 3; ECF No. 16). Plaintiffs counter that there is no identity of subject  
 17 matter or cause of action between the two actions, and that *res judicata* should  
 18 not preclude the current action. (ECF No. 15).

19     Whether plaintiffs’ current action should be barred by *res judicata*  
 20 requires examination of each of the four parts of the *res judicata* test to  
 21 determine whether the previous and current actions are identical such that  
 22 litigation of the latter should be barred. Plaintiffs do not dispute that the parties  
 23 in the present suit are identical to, or in privity with, the parties in the Small  
 24 Claims Court action, nor do they dispute that the quality of persons for and  
 25 against whom the claims are made is identical. (ECF No. 3). Therefore, this  
 26 Court need only examine the first and second prongs of the *res judicata* test.

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1           **1. Identity Of Subject Matter**

2           Washington courts have acknowledged the difficulty in determining  
3 whether subject matter between two actions is identical. “While there is a dearth  
4 of case law defining when the subject matter of cases differs, one noted  
5 authority has observed that when courts examine subject matter ‘[t]he critical  
6 factors seem to be the nature of the claim or cause of action and the nature of  
7 the parties.’” *Hayes v. City of Seattle*, 131 Wash. 2d 706, 712-13, 934 P.2d  
8 1179, 1182 (1997) opinion corrected, 943 P.2d 265 (Wash. 1997); citing Philip  
9 A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60  
10 Wash.L.Rev. 805, 812-13 (1985).

11           Defendant asserts the subject matter between the two actions is identical,  
12 satisfying the first prong of the *res judicata* test. (ECF No. 3). According to  
13 defendant, the subject matter of both cases is “[plaintiff’s] termination of  
14 employment.” *Id.* It alleges that “[t]his action, like the small claims action,  
15 concerns the activities of sanofi-aventis against Mr. Peterson.” *Id.* Plaintiff,  
16 however, casts the previous action as “claims for pre-termination unpaid wages  
17 and vacation pay,” and the instant action as a “wrongful termination/age  
18 discrimination claim,” and asserts that the two actions are “completely separate  
19 and distinct.” (ECF No. 15).

20           The nature of the parties is undeniably identical – Mr. Peterson was an  
21 employee and the defendant was his employer. However, the nature of the  
22 previous and present claims are sufficiently different that there is no identity of  
23 subject matter. Defendant defines the two cases as concerning “the activities of  
24 sanofi-aventis against Mr. Peterson,” (ECF No. 15). Any two actions can be  
25 found to have identity of subject matter if they are sufficiently generalized.  
26 Here, it appears defendant has overgeneralized the nature of the claims.

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1       The May 2010 action involved unpaid vacation wages before Mr.  
2 Peterson was terminated; the present action involves issues of age  
3 discrimination and wrongful termination at the time of his discharge from  
4 defendant's employment. While the Court acknowledges that both suits have  
5 *something* to do with Mr. Peterson's termination, only in the most general of  
6 terms are they identical in subject matter. As such, no identity of subject matter  
7 exists between the May 2010 Small Claims action and the present action.

8

9       **2. Identity Between Causes Of Action**

10      To determine whether there is identity between causes of action in  
11 previous and present cases, the Court considers: "(1) whether rights or interests  
12 established in the prior judgment would be destroyed or impaired by  
13 prosecution of the second action; (2) whether substantially the same evidence is  
14 presented in the two actions; (3) whether the two suits involve infringement of  
15 the same right; and (4) whether the two suits arise out of the same transaction or  
16 nucleus of facts." *Feminist Women's Health Ctr.*, 63 F.3d at 867, citing *Rains*,  
17 674 P.2d at 168. No single factor is determinative, and a court may apply *res*  
18 *judicata* even in the absence of one or more of these factors. *Id.*

19      Defendant addresses the second and fourth prongs, while remaining silent  
20 on the first and third. This silence implies its acknowledgment that no rights  
21 from the judgment in the Small Claims Court would be impaired by prosecution  
22 of the current case, as well its acknowledgment that the rights infringed upon in  
23 the two cases are different. (ECF No. 3). Therefore, the Court determines that  
24 the first and third prongs of the test to determine identity between causes of  
25 action need not be examined.

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1                   (a) *Substantially similar evidence*

2                   Defendant asserts the same evidence that was presented in the Small  
3 Claims Court action would be presented in the present action: "Such evidence  
4 would likely include written procedures and policies of sanofi-aventis and Mr.  
5 Peterson's termination letter." (ECF No. 3). In the list of documents in  
6 defendant's Request for Judicial Notice, defendant enumerates the following as  
7 evidence in the Small Claims action: a confidential letter to Mr. Peterson; Mr.  
8 Peterson's Termination Form Submission; a letter from Mr. Peterson requesting  
9 payout of vacation; a worker's rights complaint; "Employment Standards  
10 Program Wage Release – Case #65528"; a notice of the small claim; a transcript  
11 of the hearing before Judge Tripp; a notice of the small claims appeal; and a  
12 notice of appeal to superior court and certification of filing status. (ECF No. 5).  
13 In examining the transcript of the hearing before Judge Tripp, it appears that the  
14 primary evidence used in adjudicating the Small Claims Court action was the  
15 amount of time Mr. Peterson had worked, the company policies defendant used  
16 in determining the number of vacation days given, and the rate of pay for those  
17 vacation days. (ECF No. 5, Ex. 1).

18                  Plaintiffs assert the evidence that will be presented in the present age  
19 discrimination/wrongful termination case will be comprised of "Mr. Peterson's  
20 work performance, the circumstances surrounding his discharge, and the reason  
21 for his discharge. Evidence will be presented relating to [Mr.] Peterson's  
22 compensation package with [defendant], including vacation pay, but only for  
23 the purpose of demonstrating his economic loss resulting from his termination."  
24 (ECF No. 15).

25                  While there may be some overlap in evidence between the Small Claims  
26 Court action and the present age discrimination/wrongful termination action, the  
27

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1 evidence does not appear to be so identical as to establish identity between the  
2 causes of action and grounds for preclusion on a theory of *res judicata*. A case  
3 involving age discrimination should involve evidence different from or in  
4 addition to policies for determining vacation days and pay rates for such days.  
5 The pleadings filed in this case confirm this is so.

6

7       **(b) Same transaction or nucleus of facts**

8 Defendant asserts that because both the Small Claims Court action and  
9 the present age discrimination/wrongful termination action arise out of “the  
10 facts and circumstances of Mr. Peterson’s termination from employment,” (ECF  
11 No. 3), the two suits have the same nucleus of facts and are thus identical in  
12 cause of action, and should be barred by *res judicata*.

13 Plaintiffs assert that “[t]he prior proceedings arose out of work performed  
14 by Mr. Peterson for [defendant] prior to his discharge. The instant case arises  
15 out of the facts relating to his discharge. The facts relating to [Mr.] Peterson’s  
16 right to be paid for his work have nothing to do with the facts relating to the  
17 reasons for his discharge.” (ECF No. 15).

18 Again, any two suits can arise out of the same “nucleus of facts” if that  
19 nucleus is construed generally enough. While both suits do pertain to the fact  
20 that Mr. Peterson once worked for defendant and was subsequently terminated,  
21 defendant once again resorts to an over-generalization. The Small Claims action  
22 was just that – a small, specific action intended to obtain accrued and unpaid  
23 vacation days from a former employer while that employee worked there. The  
24 current action involves the facts relating to his discharge: whether his  
25 termination was based upon age discrimination, and whether that termination  
26 was wrongful. No fact in the Small Claims Court action pertained to Mr.

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1 Peterson's conduct while he worked for defendant or *why* he was discharged.  
 2 The Court anticipates that such facts will be introduced in the present case.  
 3 Accordingly, the two suits do not operate out of the same nucleus of facts such  
 4 that there is identity between causes of action.

5 None of the factors support an identity between the Small Claims Court  
 6 cause of action and the present age discrimination/wrongful termination cause  
 7 of action.

8

9       **3. *Res Judicata* Effect Of Small Claims Court Judgment**

10       Citing *Landry v. Luscher*, 95 Wash. App. 779, 976 P.2d 1274 (1999), and  
 11 *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wash. App. 299, 308, 57 P.3d 300  
 12 (2002), defendant argues that this Court should not ignore a defense of *res*  
 13 *judicata* simply because the prior judgment came from a court with limited  
 14 jurisdiction such as Small Claims Court (ECF No. 3).

15       In *Luscher*, plaintiffs obtained a judgment in Small Claims Court for  
 16 property damage from an automobile accident involving the parties, then  
 17 attempted to bring an action in superior court for personal injury arising out of  
 18 the same accident. *Luscher*, 95 Wash. App. at 780. The court barred the action  
 19 on *res judicata* grounds, finding that the plaintiffs had improperly split their  
 20 claims. *Id.* Similarly, in *Avery*, a plaintiff obtained a judgment in his favor for  
 21 payment of a medical bill by his insurer; he later commenced a second Small  
 22 Claims suit for another medical bill, and State Farm filed suit in superior court  
 23 seeking a declaratory judgment that it was not obligated to pay on the ground  
 24 that the claim was time-barred under the release agreement. *Avery*, Wash. App.  
 25 299 at 303. Avery argued that the prior Small Claims suit should be given  
 26 preclusive effect; the trial court disagreed, but the appellate court determined

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1 that a Small Claims Court's judgments do have preclusive effect upon a suit in  
2 superior court. *Id.* at 308.

3 This Court does not dispute that Washington case law has routinely held  
4 that the limited jurisdiction of Small Claims Court does not preclude a defense  
5 of *res judicata*, and that a claim resolved in that Court will preclude a similar  
6 claim in another court. However, the facts in *Luscher* and *Avery* are quite  
7 distinct from those at issue here. In those cases, the actions were undeniably  
8 identical in subject matter and causes of action.

9 Here, the issue decided in favor of Mr. Peterson in Small Claims Court  
10 involved accrued and unpaid vacation days, whereas the current action involves  
11 age discrimination and wrongful termination in violation of state and federal  
12 statutes. While the Court acknowledges the preclusive power of a Small Claims  
13 Court judgment upon a similar claim brought in a superior court, such power is  
14 not at issue here since the present claims are distinct in both subject matter and  
15 causes of action from the claims presented in Small Claims Court.

16 Additionally, the Court notes that in Washington, the jurisdiction of  
17 Small Claims Court is limited to "cases for the recovery of money only if the  
18 amount claimed does not exceed five thousand dollars." RCW 12.40.010.  
19 Defendant's Notice of Removal asserts diversity jurisdiction pursuant to 28  
20 U.S.C. § 1332 because "[t]he amount in controversy exceeds \$75,000 based on  
21 the following allegations ... (1) [plaintiffs'] allegation that they are entitled to  
22 damages related to 'economic loss and mental anguish and emotional distress';  
23 (2) [plaintiffs'] request for 'damages for economic loss'; and (3) [plaintiffs']  
24 request for 'general damages for mental anguish and emotional distress'...  
25 Moreover, Mr. Peterson's annual compensation while employed by [defendant]  
26 was in excess of \$75,000.00," ECF No. 1 (citations omitted). This Court

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1 questions how plaintiffs could or should have brought the present action in  
2 Small Claims Court when defendant itself asserts that the amount plaintiff now  
3 seeks to recover far exceeds the Small Claims Court's \$5,000 limit.

### **III. CONCLUSION**

No identity of subject matter or between causes of action exists between  
Mr. Peterson's Small Claims Court action and plaintiffs' present age  
discrimination/wrongful termination action. Accordingly, the present suit is not  
precluded on *res judicata* grounds. The plaintiffs did not improperly split their  
claims. Plaintiffs' complaint states a claim upon which relief can be granted.  
Defendant's Fed. R. Civ. P. 12(b)(6) Motion to Dismiss (ECF No. 2) is  
**DENIED.**

13       **IT IS SO ORDERED.** The District Court Executive is directed to enter  
14 this order and provide copies to counsel of record.

DATED this 13th day of July, 2012.

*s/Lonny R. Suko*

LONNY R. SUKO  
United States District Judge

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